

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FALCON TRUCKING, LLC and
RAGLE, INC., A SINGLE EMPLOYER
and/or JOINT EMPLOYERS

Respondents

and

CHAUFFEURS, TEAMSTERS AND HELPERS,
LOCAL UNION NO. 215 A/W INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Cases 25-CA-132518
25-CA-135316
25-CA-135335
25-CA-159531

Charging Union

COUNSEL FOR THE GENERAL COUNSEL'S
MOTION TO TRANSFER CASE TO AND CONTINUE PROCEEDINGS BEFORE THE
BOARD AND FOR DEFAULT JUDGMENT

Now comes Rebekah Ramirez, Counsel for the General Counsel of the National Labor Relations Board, herein the Board, and pursuant to Sections 102.24 and 102.50 of the Board's Rules and Regulations, files this Motion to Transfer Case to and continue Proceedings Before the Board and for Default Judgment. In support of this Motion, Counsel for the General Counsel states as follows:

1. (a) The original charge in Case 25-CA-132518 was filed by Chauffeurs, Teamsters, and Helpers Local Union No. 215, a/w International Brotherhood of Teamsters, herein identified as the Charging Party, on July 11, 2014, and a copy was served by regular mail on Falcon Trucking, LLC, herein identified as Respondent Falcon Trucking, on the same date. Copies of the charge and the affidavit of service for the charge are attached as Exhibits A and B, respectively.

(b) The first amended charge in Case 25-CA-132518 was filed by the Charging Party on November 6, 2015, and a copy was served by regular mail on Respondent Falcon Trucking and Ragle, Inc., herein identified as Respondent Ragle, and herein identified jointly with Respondent Falcon Trucking as Respondents, on November 9, 2015. Copies of the charge and the affidavit of service for the charge are attached as Exhibits C and D, respectively.

(c) The original charge in 25-CA-135316 was filed by the Charging Party on August 25, 2014, and a copy was served by regular mail on Respondent Falcon Trucking on the same date. Copies of the charge and the affidavit of service for the charge are attached as Exhibits E and F, respectively.

(d) The original charge in 25-CA-135335 was filed by the Charging Party on August 25, 2014, and a copy was served by regular mail on Respondent Ragle on the same date. Copies of the charge and the affidavit of service for the charge are attached as Exhibits G and H, respectively.

(e) The original charge in 25-CA-159531 was filed by the Charging Party on September 8, 2015, and a copy was served by regular mail on Respondent Falcon Trucking on the same date. Copies of the charge and the affidavit of service for the charge are attached as Exhibits I and J, respectively.

(f) The first amended charge in 25-CA-159531 was filed by the Charging Party on November 6, 2015, and a copy was served by regular mail on Respondents on November 10, 2015. Copies of the charge and the affidavit of service for the charge are attached as Exhibits K and L, respectively.

2. (a) On June 30, 2015, the then Regional Director for Region 25 issued and served on Respondents by certified mail an Order Consolidating Cases, Consolidated Complaint

and Notice of Hearing in Cases 25-CA-132518, 25-CA-135316, and 25-CA-135335. Copies of the Consolidated Complaint and the affidavit of service are attached as Exhibits M and N, respectively.

(b) On January 28, 2016, the then Regional Director for Region 25 issued and served on Respondents by certified mail an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing in Cases 25-CA-132518, 25-CA-135316, 25-CA-135335, and 25-CA-159531. Copies of the Consolidated Complaint and the affidavit of service are attached as Exhibits O and P, respectively.

(c) On February 19, 2016, the Charging Party filed a second amended charge in Cases 25-CA-132518 and 25-CA-159531. In each of the second amended charges the Charging Party deleted a single allegation that was not included in the Consolidated Complaint issued on January 28, 2016. Additionally, in Case 25-CA-132518 the second amended charge was modified to add “8(a)(5)” to the charge form in box k. Nothing else was altered. Copies of the second amended charge in Case 25-CA-132518 and the affidavit of service for the charge are attached as Exhibits Q and R, respectively. Copies of the second amended charge in Case 25-CA-159531 and the affidavit of service for the charge are attached as Exhibits S and T, respectively.

3. On April 15, 2016, Respondents entered into an informal Settlement Agreement, which was approved by the Regional Director for Region 25 on April 19, 2016. A copy of the Settlement Agreement and Notice to Employees is attached as Exhibit U.

4. The Settlement Agreement required Respondents, *inter alia*, to: (1) upon request, bargain in good faith with the Charging Party for a reasonable time not to be less than 6 months, regardless of the number of employees in the employee complement during that time; (2) resume

Respondent Falcon Trucking's operations and assignment practices for the work previously performed by Falcon Trucking employees represented by the Charging Party in order to restore Falcon Trucking as it existed prior to July 8, 2014; (3) offer Daniel J. Mabrey immediate and full reinstatement; (4) make Michael Sachs, Kenneth Slaughter, Michael Thomas Jr., and Rachelle R. Boop, who did not desire reinstatement, and Daniel J. Mabrey, whole for the wages and other benefits lost because Respondents stopped assigning them work; and (4) post appropriate notices. Pursuant to these provisions, Respondents agreed to make whole unit employees named in the "Backpay" section in the specific amounts listed after their names.

5. The Settlement Agreement contains the following clause concerning noncompliance by Respondents with the agreed-upon terms:

The Charged Parties agrees that in case of non-compliance with any of the terms of this Settlement Agreement by either of the Charged Parties, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by either of the Charged Parties, the Regional Director will reissue the Consolidated Complaint previously issued on January 28, 2016, in the instant case(s). Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the Consolidated Complaint. The Charged Parties understand and agree that the allegations of the aforementioned consolidated complaint will be deemed admitted and their respective Answer to such consolidated complaint will be considered withdrawn. The only issue that may be raised before the Board is whether either of the Charged Parties defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the consolidated complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Parties on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Parties/Respondents at the last address provided to the General Counsel.

6. By letter dated May 6, 2016, Respondents were sent a conformed copy of the Settlement Agreement and were advised to take the steps necessary to comply with the Settlement Agreement. Respondents submitted a Certification of Compliance with the

Settlement Agreement on August 4, 2016 certifying, *inter alia*, that the Notice to Employees was posted and mailed; back pay payments were disbursed; and that on June 20, 2016, Respondents resumed operations and assignment practices for the work previously performed by Respondent Falcon Trucking employees. Copies of the May 6, 2016 letter and the August 4, 2016 certification are attached as Exhibits V and W, respectively.

7. On November 10, 2016, the Charging Party filed a charge in Case 25-CA-188022 against Respondents alleging that since about May 15, 2016, Respondents have violated the Settlement Agreement in the instant matter by contracting out bargaining unit work to avoid the Union. Copies of the charge and the affidavit of service of the charge are attached as Exhibits X and Y, respectively.

8. The Regional Director of Region 25 conducted an investigation and determined that Respondents failed to comply with the Settlement Agreement with respect to restoring operations at Respondent Falcon Trucking as they existed prior to July 8, 2014, as was required by the Settlement Agreement. Respondent Falcon Trucking employed 5 truck drivers prior to July 8, 2014, all of which were found to have been effectively discharged. All but one waived reinstatement for purposes of the Settlement Agreement. Since entering the Settlement Agreement, Respondent Falcon Trucking has only employed the one driver, and Respondents have continued to subcontract work previously performed by unit members and have continued to transfer unit work to Respondent Ragle.

9. By letter dated March 14, 2017, Respondents were notified of Respondents' default and were provided with a 14 days' notice to cure the non-compliance with the terms of the Settlement Agreement. In response to the notice of default and demand for cure, Respondents by counsel, by letter dated March 28, 2017, denied that they are in violation of the Settlement

Agreement and informed the Region that Respondents have decided to cease operations of Respondent Falcon Trucking and have withdrawn recognition from the Charging Party. Further, Respondents acknowledged that they have been subcontracting the work that was previously performed by Respondent Falcon Trucking. Copies of the March 14, 2017 and March 28, 2017 letters are attached as Exhibits Z and AA, respectively

10. To date, Respondents have failed to restore operations at Respondent Falcon Trucking as they existed prior to July 8, 2014, as required by the Settlement Agreement and have refused to bargain with the Charging Party.

11. Because Respondents have failed to comply with the terms of the Settlement Agreement, on May 31, 2017, the Regional Director reissued and served on Respondents by certified mail the Consolidated Complaint previously issued on January 28, 2016. Copies of the reissued Consolidated Complaint and the affidavit of service are attached as Exhibit BB.

12. Pursuant to the terms of the Settlement Agreement, and by virtue of Respondents' noncompliance with the agreement's terms: (a) Respondents have waived the right to file an answer and have agreed that the allegations of the reissued Consolidated Complaint may be deemed as true by the Board; (b) no hearing is necessary regarding the allegations of the reissued Consolidated Complaint; and, (c) the motion to transfer proceedings to the Board and for summary judgment should be granted.

ACCORDINGLY, Counsel for the General Counsel respectfully moves:

- A. That the Board transfer this proceeding to itself for decision;
- B. That all allegations of the Consolidated Complaint be deemed to be true;

C. That the Respondents be found by the Board to have violated Sections 8(a)(1), (3) and (5) of the National Labor Relations Act, as alleged in the Consolidated Complaint, without taking evidence in support of these allegations;

D. That an appropriate Remedial Order be issued to include, among other things, that Respondent be ordered to restore operations at Respondent Falcon Trucking as they existed prior to July 8, 2014; and

E. That this Motion be ruled upon as expeditiously as possible.

Respectfully submitted this 2nd day of June, 2017.

s/ Rebekah Ramirez
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Certificate of Service

I certify that on the 2nd day of June, 2017, I emailed copies of the Counsel for the General Counsel's Motion to Transfer Case to and Continue Proceedings Before the Board and for Default Judgment to the following parties of record:

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